

STATE OF MICHIGAN
COURT OF APPEALS

DONNA MILLER,

Plaintiff/Counter-Defendant-
Appellant,

v

JOHN HEAD and KAREN HEAD,

Defendants/Counter-Plaintiffs-
Appellees.

UNPUBLISHED

May 22, 2007

No. 268644

Oakland Circuit Court

LC No. 2002-043276-CZ

Before: White, P.J., and Saad and Murray, JJ.

MEMORANDUM.

Plaintiff appeals as of right from a circuit court order awarding defendants \$22,276.97 in costs and attorney fees. We remand for proper findings of fact and conclusions of law concerning the award.

“Attorney fees may generally be awarded as taxable costs only where specifically authorized by statute or court rule.” *Broadway Coney Island, Inc v Commercial Union Ins Co*, 217 Mich App 109, 116; 550 NW2d 838 (1996). In this case, the basis for the court’s award of attorney fees is not clear from the record. It is unclear if the circuit court proceeded on the basis that attorney fees were properly awarded to the prevailing party as “costs” under MCR 2.625, regardless of whether the action was frivolous, or if the court concluded that the action was, in fact, frivolous.

If the former, the court was in error. While some court rules define “actual costs” to include a reasonable attorney fee, see, e.g., MCR 2.405(A)(6) (offers of judgment) and MCR 2.403(O)(6) (case evaluation sanctions), “costs” are not so defined in MCR 2.625.

To the extent the court may have intended an award of sanctions for filing a frivolous claim pursuant to MCR 2.625(A)(2), the record does not include any finding that plaintiff’s “primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party,” that she “had no reasonable basis to believe that the facts underlying [her] legal position were in fact true,” or that her “legal position was devoid of arguable legal merit.” MCL 600.2591(3)(a). Without a further explanation of the trial court’s ruling, we cannot determine whether the court properly applied the pertinent court rules and statutes.

Remanded for findings of fact and conclusions of law consistent with this opinion. We do not retain jurisdiction.

/s/ Helene N. White

/s/ Henry William Saad

/s/ Christopher M. Murray